IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.59 of 2001.

Judgment reserved on: 4.12.2006.

Date of decision: 11.12.2006

Pitamber Dutt & Another **….Petitioners**

Versus

H.P. State Electronics Development Corporation Ltd. & Another. **…Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioners : **Mr.Rajiv Sharma, Senior Advocate with Mr.Surinder Sharma,Advocate.**

For Respondent No.1: **Mr.Praneet Gupta, Advocate.**

Dev Darshan Sud,J.

The petitioners have approached this Court by way of the present writ petition wherein they have challenged the award made by the Industrial Tribunal-cum-Labour Court, Shimla, annexure P-1 to the writ petition.

The grievance made by the petitioners is that although the Labour Court has granted the relief of reinstatement with full back seniority for the purpose of regularization and other perks and facilities, however, the relief of back wages has not been granted.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

A reference under Section 10 of the Industrial Disputes Act was made for determination of the following question:

> "Whether the termination of services of S/Shri Pitamber Datt and Suresh Kumar by the Managing Director, Himachal Pradesh, State Electronics Development Corporation, Shimla-171002 w.e.f. 21.1.1992 without any notice, charge-sheet, enquiry and without compliance of Section 25(F) of the Industrial Disputes Act, 1947 and retaining juniors besides the violation of the labour Court Award, dated 27.9.88 is legal and justified, if not, to what relief of past service benefits including back wages, seniority and amount of compensation, S/Shri Pitamber Datt and Suresh Kumar are entitled ?"

The learned Tribunal, framed three issues namely:

(1) Whether the termination of services of petitioners is violative of Section 25F of the Industrial Dispute Act, 1947 as alleged ? OPP.

(2) Whether no enquiry was held against the petitioner as alleged ? OPP.

(3) Relief.

On Issue No.1, the learned Court below held that the retrenchment of the petitioner was violative of the provisions of Section 25-F and G of the Industrial Disputes Act. On Issue No.2, it was held that no enquiry was held against the petitioners. The claim petition was allowed by the learned Court below, however, relief of back wages was not granted.

The petitioners have assailed the award to the limited extent, confined to the claim of back wages.

It is admitted by the learned counsel for the respondents that no writ petition challenging the award has been filed by the employer.

Learned Senior Counsel appearing for the petitioners has placed reliance on number of judgments in support of his contention that the burden and onus of proof that the petitioners were gainfully employed was on the employer. I do not find it necessary to discuss the proposition of law laid down in these judgments. The Hon'ble Supreme Court of India in ***Kendriya Vidyalaya Sanghathan and Anr. Vs. S.C. Sharma, 2005 LLR 275,*** has held that the entitlement to back wages stands determined by the Hon'ble Supreme Court in number of decisions. In para-11 of the judgment their Lordships have held as under:

> "Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

This proposition of law has been reaffirmed in ***U.P. State Barassware Corporation Limited and Another*** Vs. ***Uday Narain Pandey***, (2006) 1 SCC 479 and ***State of M.P and others*** Vs. ***Arjunlal Rajak***, (2006) 2 SCC 711.

From the averments and the material on the record, I find that the initial burden of proof, which was on the petitioners, has not been discharged. In fact, there is nothing on the record to show as to whether the petitioners were gainfully employed or not. There is no pleading, evidence or other material on the record to suggest that the petitioners were unemployed.

Under these circumstances, I find myself unable to accept the contention of the petitioners that it was for the employer to have alleged and proved the fact that the petitioners were not gainfully employed.

The writ petition is, therefore, dismissed. There shall be no order as to costs.

December 11, 2006 **(Dev Darshan Sud)**
(aks) **Judge.**